

CITY COUNCIL AGENDA ITEM NO. 3

Meeting Date: May 18, 2010

Subject/Title: Adopt a Resolution that Endorses the three (3) proposed art installations for the Civic Center and Authorizes the City Manager, or Designee, to execute an artist services agreement with Eric Powell in the amount of \$290,036, plus a 10% contingency of \$29,003.60, for a total agreement amount not to exceed \$319,039.60

Prepared by: Gail Leech, Management Analyst

Submitted by: Karen Chew, Assistant City Manager

RECOMMENDATION

Adopt a Resolution that Endorses the three (3) proposed art installations for the Civic Center and Authorizes the City Manager, or Designee, to execute an artist services agreement with Eric Powell in the amount of \$290,036, plus a 10% contingency of \$29,003.60, for a total agreement amount not to exceed \$319,039.60.

PREVIOUS ACTION

On April 10, 2007, City Council endorsed the Brentwood Civic Center Five Year Financing and Phasing Plan in concept and authorized staff to bring the Plan components to the City Council for formal consideration as part of the 2007/08 – 2011/12 CIP budget.

On April 24, 2007, City Council, by Resolution No. 2007-89, authorized the City Manager to Execute an Agreement with LPA, Inc., for the architectural planning, design and related services of the New City Hall (CIP No. 337-31390), including the Civic Center Parking Facility and Civic Center Plaza in an amount not to exceed \$2,922,218, plus contingency of \$292,221 for a total of \$3,214,439.

On November 13, 2007, by Resolution No. 2007-269, City Council 1) endorsed the Civic Center Conceptual Plans; 2) endorsed the City Hall and Community Center Building Plans; 3) endorsed the History Walk concept as one of the Required Art Components of the Civic Center; and 4) directed staff to proceed with this project to design development.

On May 13, 2008, by Resolution No. 2008-115, City Council approved the Swinerton Management and Consulting contract for Construction Management services for the Civic Center Project.

On May 13, 2008, by Resolution No. 2008-117, City Council endorsed the City Park Master Site Plan.

On August 26, 2008, by Resolution No. 2008-220, City Council approved the Mitigated Negative Declaration for the Brentwood Civic Center project; by Resolution No. 2008-221, approved the General Plan amendment (GPA 07-02) to change the land use designation on a portion of the Civic Center site from Park to Downtown (mixed use); by Resolution No. 2008-222, approved a Downtown Specific Plan amendment to add the Brentwood Civic Center District Zone, create site development standards and permitted uses for the new district zone, and re-designate City Park, the adjacent Maple Street and Third Street and two City-owned parcels to the new district zone; and by Resolution No. 2008-223, approved a summary vacation for portions of Maple Street and Third Street.

On November 18, 2008, City Council directed staff to implement a phased approach for the Civic Center Project consisting of building the City Hall and Community Center as Phase 1; and the Parking Facility as Phase 2.

On September 8, 2009, by Resolution No. 2009-189 the City Council (as the Brentwood Infrastructure Financing Authority) authorized the issuance, sale and delivery of not to exceed \$48,000,000 aggregate principal amount of Civic Center Project Lease Revenue Bonds.

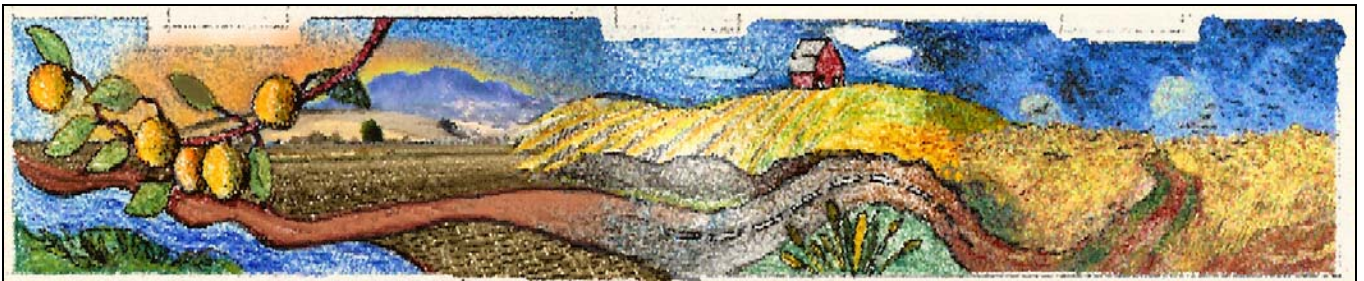
On October 13, 2009, City Council awarded the construction contract for Phase 1 of the Civic Center Project to Lathrop in an amount of \$28,486,000 plus contingency for a total of \$32,758,900.

BACKGROUND

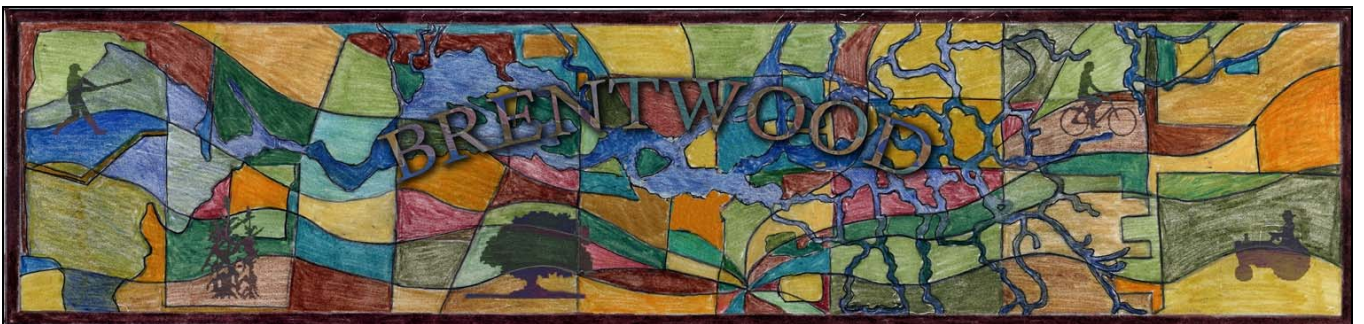
Pursuant to Ordinance No. 760, which governs the Public Art Program, Capital Improvement Projects are required to incorporate a public art component equal to one percent (1%) of the construction costs on the project. The total construction costs for the Civic Center project, less the parking structure is \$27,966,838. One percent of that equals \$279,668. The public art component costs for the Civic Center total \$290,036.

The Civic Center project team researched many local artist's and selected three artists to submit design concepts for the Civic Center Plaza fountain, a mosaic tile design; the City Hall exterior wall, a full-color mural with an anti-graffiti coating; and the City Park children's play area fence, a decorative, playful fence along Oak Street near the play equipment.

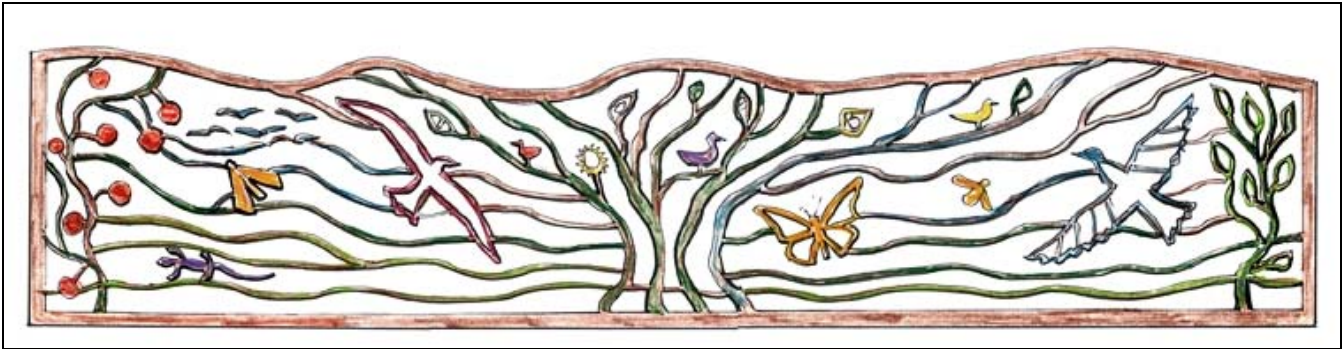
The three designs chosen for the installation are shown below and will be shown in larger scale at the City Council meeting.



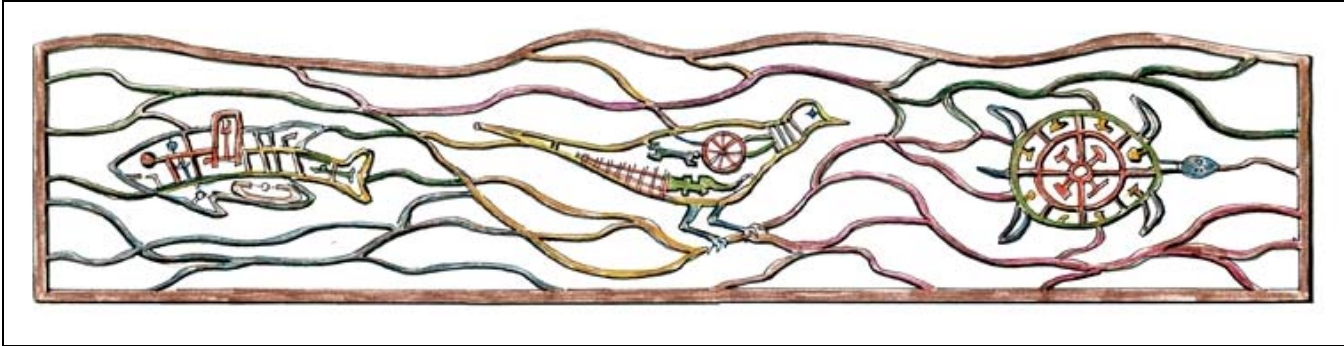
Fountain Mosaic Concept



City Hall Mural Concept



Children's Play Area Fence Concept # 1



Children's Play Area Fence Concept # 2

FISCAL IMPACT

The contract amount is \$290,036, plus 10% contingency of \$29,003.60, for a total agreement amount of \$319,039.60. The funds for this work are included in the 2009/10-2013/14 Capital Improvement which includes the Civic Center project budgets and are allocated as follows:

City Park (CIP Project # 352-52406) – \$193,465.61
Civic Center Plaza (CIP Project # 337-37193) - \$106,080.67
New City Hall (CIP Project # 337-37195) - \$7,656.95
New Community Center (CIP Project # 337-37195) - \$11,836.37

Attachments:
Resolution
Agreement

RESOLUTION NO.

ADOPT A RESOLUTION THAT ENDORSES THE THREE (3) PROPOSED ART INSTALLATIONS FOR THE CIVIC CENTER AND AUTHORIZES THE CITY MANAGER, OR DESIGNEE, TO EXECUTE AN ARTIST SERVICES AGREEMENT WITH ERIC POWELL IN THE AMOUNT OF \$290,036, PLUS A 10% CONTINGENCY OF \$29,003.60, FOR A TOTAL AGREEMENT AMOUNT NOT TO EXCEED \$319,039.60

WHEREAS, on April 10, 2007, City Council endorsed the Brentwood Civic Center Five Year Financing and Phasing Plan in concept and authorized staff to bring the Plan components to the City Council for formal consideration as part of the 2007/08 – 2011/12 CIP budget; and

WHEREAS, on April 24, 2007, City Council, by Resolution No. 2007-89, authorized the City Manager to Execute an Agreement with LPA, Inc., for the architectural planning, design and related services of the New City Hall (CIP No. 337-31390), including the Civic Center Parking Facility and Civic Center Plaza in an amount not to exceed \$2,922,218, plus contingency of \$292,221 for a total of \$3,214,439; and

WHEREAS, on November 13, 2007, by Resolution No. 2007-269, City Council 1) endorsed the Civic Center Conceptual Plans; 2) endorsed the City Hall and Community Center Building Plans; 3) endorsed the History Walk concept as one of the Required Art Components of the Civic Center; and 4) directed staff to proceed with this project to design development; and

WHEREAS, on May 13, 2008, by Resolution No. 2008-115, City Council approved the Swinerton Management and Consulting contract for Construction Management services for the Civic Center Project; and

WHEREAS, on May 13, 2008, by Resolution No. 2008-117, City Council endorsed the City Park Master Site Plan; and

WHEREAS, on August 26, 2008, by Resolution No. 2008-220, City Council approved the Mitigated Negative Declaration for the Brentwood Civic Center project; by Resolution No. 2008-221, approved the General Plan amendment (GPA 07-02) to change the land use designation on a portion of the Civic Center site from Park to Downtown (mixed use); by Resolution No. 2008-222, approved a Downtown Specific Plan amendment to add the Brentwood Civic Center District Zone, create site development standards and permitted uses for the new district zone, and re-designate City Park, the adjacent Maple Street and Third Street and two City-owned parcels to the new district zone; and by Resolution No. 2008-223, approved a summary vacation for portions of Maple Street and Third Street; and

WHEREAS, on November 18, 2008, City Council directed staff to implement a phased approach for the Civic Center Project consisting of building the City Hall and Community Center as Phase 1; and the Parking Facility as Phase 2; and

WHEREAS, on September 8, 2009, by Resolution No. 2009-189 the City Council (as the Brentwood Infrastructure Financing Authority) authorized the issuance, sale and delivery of not to exceed \$48,000,000 aggregate principal amount of Civic Center Project Lease Revenue Bonds; and

WHEREAS, pursuant to Ordinance No. 760, which governs the Public Art Program, Capital Improvement Projects are required to incorporate a public art component equal to one percent (1%) of the construction costs on the project. The total construction costs for the Civic Center project, less

the parking structure is \$27,966,838. One percent of that equals \$279,668. The public art component costs for the Civic Center total \$290,036; and

WHEREAS, the Civic Center project team researched many local artist's and selected three artists to submit design concepts for the Civic Center Plaza fountain, a mosaic tile design; the City Hall exterior wall, a full-color mural with an anti-graffiti coating; and the City Park children's play area fence, a decorative, playful fence along Oak Street near the play equipment; and

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Brentwood hereby:

Section 1. Endorses the three (3) proposed art installations for the Civic Center

Section 2. Authorizes the City Manager, or Designee, to execute an artist services agreement with Eric Powell in the amount of \$290,036, plus a 10% contingency of \$29,003.60, for a total agreement amount not to exceed \$319,039.60.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Brentwood at a special meeting held on the 18th day of May 2010 by the following vote:

AGREEMENT FOR ARTIST SERVICES
Eric Powell

THIS AGREEMENT is made and entered into as of the _____ day of _____ by and between the City of Brentwood, a municipal corporation of the State of California ("City"), and Eric Powell, a Sole Proprietor ("Artist") (each a "Party" and collectively, the "Parties").

RECITALS

- A. City requires the services of an artist that is experienced in murals, mosaics and custom fencing.
- B. Artist has the necessary professional skills and experience necessary to perform the services described in this Agreement.
- C. City desires to engage Artist to provide these services by reason of its qualifications and experience in performing such services
- D. Artist has submitted a proposal to City and has affirmed its willingness and ability to perform such work on the terms and manner set forth in this Agreement.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Scope of Work.

1.1 City retains Artist to perform, and Artist agrees to render, those services (the "Services") that are described in the attached Exhibit "A," which is incorporated by this reference, pursuant to this Agreement's terms and conditions.

1.2 Artist will be responsible for the professional quality, technical accuracy and coordination of the Services. Artist will, without additional compensation, correct or revise any errors or deficiencies in the Services.

1.3. Artist will keep City informed on a regular basis that the Services are being performed in accordance with the requirement and intentions of this Agreement.

1.4 If applicable, Artist has designated those persons listed in Exhibit "A" to provide the Services to the City. Artist will not change or reassign those persons described in Exhibit "A" without prior written notice to City, and will not replace those individuals with individuals to whom City has a reasonable objection.

2. Standard of Performance. Artist acknowledges that in entering into this Agreement the City is relying on Artist's special skills and experience to do and perform the Services in accordance with best standards of professional practice. While performing the Services, Artist will exercise the reasonable professional care and skill customarily exercised by reputable members of Artist's profession practicing in the Northern California area. The acceptance of the Services by City does not release Artist from these obligations.

Artist will be responsible for employing or engaging all persons necessary to perform the Services. All of Artist's staff will be qualified by training and experience to perform their assigned tasks. Artist will give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and will keep the Services under its control. On demand of City, if any employee or subcontractor of Artist fails or refuses to carry out the provisions of this Agreement or

appears to be incompetent or to act in a disorderly or improper manner, he or she will be discharged immediately from the Services.

3. Term. Unless earlier terminated, the term of this Agreement will commence upon the date first above written and will expire upon completion of the Services by Artist.
4. Schedule. Artist will generally adhere to the schedule set forth in Exhibit "A" provided, that City will grant reasonable extensions of time for the performance of the Services occasioned by unusually lengthy governmental reviews of Artist's work product or other unavoidable delays occasioned by unforeseen circumstances; provided, further, that such unavoidable delay will not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Artist's officers or employees.

Artist acknowledges the importance to City of City's project schedule and agrees to put forth its best professional efforts to perform the Services in a manner consistent with that schedule. City understands, however, that Artist's performance must be governed by sound practices. Artist will work such overtime or engage such personnel and equipment as necessary to maintain the schedule, without additional compensation.

5. Compensation.

5.1 The total fee payable for the Services to be performed during the term of this Agreement will be a not to exceed amount of Two Hundred Nines Thousand Thirty Six Dollars (\$290,036.00) as may be further specified in the attached Exhibit "A." No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. The City reserves the right to withhold a ten percent (10%) retention until City has accepted the Services.

5.2 Payment will occur only after receipt by City of invoices sufficiently detailed to include hours performed, hourly rates, and related activities and costs for approval by City.

5.3 Within thirty (30) days after receipt of any applicable progress payment request, City will verify the accuracy of the request, correct the charges where appropriate, and make payment to Artist in an amount equal to the amount of such application, as verified or corrected by City. No payment made prior to completion and acceptance of the Services will constitute acceptance of any part of the Services. City reserves the right to withhold payment from Artist on account of Services not performed satisfactorily, delays in Artist's performance of Services, or other defaults hereunder.

6. Status of Artist. Artist will perform the Services in Artist's own way and pursuant to this Agreement as an independent contractor and in pursuit of Artist's independent calling, and not as an employee of City. The persons used by Artist to provide the Services under this Agreement will not be considered employees of City for any purposes.

The payment made to Artist pursuant to the Agreement will be the full and complete compensation to which Artist is entitled. City will not make any federal or state tax withholdings on behalf of Artist or its agents, employees or subcontractors. City will not pay any workers' compensation insurance, retirement contributions or unemployment contributions on behalf of Artist or its employees or subcontractors. Artist agrees to indemnify and pay City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City may be required to make on behalf of Artist or any agent, employee, or contractor of Artist for work done under this Agreement. At the City's election, City may deduct the amounts paid pursuant to this Section, from any balance owing to Artist.

7. Subcontracting. Artist's services are unique and personal. Except as may be specified in Exhibit "A", Artist will not subcontract any portion of the Services without prior written approval of City Manager or his/her designee. If Artist subcontracts any of the Services, Artist will be fully responsible to City for the acts, errors and omissions of Artist's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Artist is for the acts and omissions of persons directly employed by

Artist. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Artist and City. Artist will be responsible for payment of subcontractors. Artist will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Artist's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

8. Other Artists. The City reserves the right to employ other Artists in connection with the Services.
9. Indemnification. Artist will hold harmless, defend and indemnify City, its officers, agents, volunteers and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of this Agreement, caused in whole or in part by any act or omission of the Artist, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the active negligence, sole negligence, or willful misconduct of City.
10. Insurance. Artist will obtain and maintain, at its cost and expense, for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Artist or Artist's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:VII."
 - 10.1 Coverages and Limits. Artist will maintain the types of coverages and minimum limits indicated below, unless Risk Manager or City Manager, in consultation with the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Artist's indemnification obligations under this Agreement. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Artist pursuant to this Agreement are adequate to protect Artist. The coverage will contain no special limitations on the scope of its protection to the above-designated insureds except for Workers Compensation. Artist will obtain occurrence coverage which will be written as claims-made coverage. If Artist believes that any required insurance coverage is inadequate, Artist will obtain such additional insurance coverage, as Artist deems adequate, at Artist's sole expense.
 - 10.1.1 Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.
 - 10.1.2 Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.
 - 10.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Artist has no employees and provides, to City's satisfaction, a declaration stating this.
 - 10.2 Endorsements. For Commercial General Liability Insurance and Automobile Liability Insurance, Artist will ensure that the policies are endorsed to name the City, its officers, agents, volunteers and employees as additional insureds. Prior to City's execution of this Agreement, Artist will furnish certificates of insurance and endorsements to City.
 - 10.3 Cancellation. Insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent pursuant to the notice provisions of this Agreement.

- 10.4 Failure to Maintain Coverage. If Artist fails to maintain any of these insurance coverages, then City will have the option to declare Artist in breach of this Agreement, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Artist is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Artist or deduct the amount paid from any sums due Artist under this Agreement.
- 10.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.
- 10.6 Primary Coverage. For any claims related to the Services and this Agreement, the Artist's insurance coverage will be primary insurance with respect to City, its officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City for itself, its officers, agents, volunteers and employees, will be in excess of Artist's insurance and not contributory with it.
- 10.7 Reduction in Coverage/Material Changes. Artist will notify City in writing pursuant to the notice provisions of this Agreement thirty (30) days prior to any reduction in any of the insurance coverage required pursuant to this Agreement or any material changes to the respective insurance policies.
- 10.8 Waiver of Subrogation. The policies shall contain a waiver of subrogation for the benefit of City.
11. Business License. Artist will obtain and maintain a City of Brentwood Business License for the term of the Agreement, as it may be amended from time-to-time.
12. Maintenance of Records. Artist will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Artist will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Artist will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.
13. Ownership Rights.
- 13.1 Copyrights.
- A. Artist shall retain all copyrights in and to any work(s) created under this Agreement, provided that Artist hereby grant to City an irrevocable license to graphically depict the work for any non-commercial purpose whatsoever. For the purposes of this limitation, the graphic depiction of the work(s) on materials designed to promote City shall be deemed to be a non-commercial use. City shall not be responsible for any third party infringement of Artist's copyright.
- B. If, for any reason, the approved design is not implemented, all rights to the proposed work shall be retained by Artist.
- C. Artist agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the State of California and the United States. Artist hereby represents and warrants that the work does not, and Artist has not and will not, utilize any protected patent, trademark or copyright in performance under this Agreement unless and until Artist has obtained proper permission and all releases and other necessary documents. If Artist specifies any material, equipment, process or procedure which is protected, Artist shall disclose such patents, trademarks and copyrights in the construction drawings and technical specifications, such listing to be appended to this Agreement and shall be incorporated by this reference.
- D. Artist agrees to release, indemnify, defend and save harmless City, its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or

proceedings of any kind resulting from the performance under this Agreement which infringes upon any patent, trademark or copyright or other right protected by law.

13.2 Artists Moral Rights; City Ownership Rights.

- A. City intends to make its best efforts to display the work at the project site as originally created by Artist and to maintain the work in good condition. However, City must preserve complete flexibility to operate and manage City properties. Therefore, subject to its obligation to make good-faith efforts to consult with Artist as set forth in subparagraph (B)(3) below, City retains the absolute right to alter, repair, modify, remove, relocate, sell, dispose of, or destroy (collectively, "Modify") the work in its sole judgment. For example, City may modify the work to eliminate hazards, to comply with the ADA, to otherwise aid in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the project site to be inappropriate, City has the right to install the work at an alternate location that it chooses in its sole reasonable discretion
 - B. With respect to the work produced under this Agreement, except as otherwise set forth herein, Artist waives any and all claims, arising at any time and under any circumstances, against City its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the work is incorporated into a building such that the work cannot be removed from the building without physical defacement, mutilation, alteration, distortion, destruction, or other modification (collectively, "Modification") of the work, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for Modification of the work.
 - C. Where time permits, prior to Modifying the work, City shall make reasonable good faith efforts to notify and consult with Artist, at the last phone number or address provided by Artist to the City, and to come to a mutually agreeable plan for disposition of the work. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing. If the work is modified and City intends to maintain the work on display, City shall make a reasonable good faith effort to engage Artist in the restoration of the work and to compensate Artist for Artist's time and efforts at fair market value, which may be the subject of a future Agreement between Artist and City. However, City has no obligation under this Agreement to restore the work or to compensate Artist for any restoration work. If City Modifies the work without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the work in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).
 - D. Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of City, Artist retains Artist's moral rights in the work, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim against a third party who is not an officer, employee, agent, successor or assign of City for Modification of the work. City has no obligation to pursue claims against third parties to remedy or prevent Modification of the work. However, as owner of the work, City may pursue claims against third parties for damages or to restore the work if the work has been Modified without City's authorization.
14. Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Artist in connection with the performance of the Services pursuant are confidential until released by the City to the public, and the Artist will not make any of these documents or information available to any individual or organization not employed by the Artist or the City without the written consent of the City before any such release.

15. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally, by facsimile or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For City:

City of Brentwood
708 Third Street
Brentwood, CA 94513
Phone No. (925) 516-5118
Facsimile No. (925) 516-5401
Attn: Gail Leech

For Artist:

Eric Powell
Sculptor
770 Camelia Street
Berkeley, CA 94710
Phone No.: 925-510-525-1872
Facsimile No.: 510-525-8721

Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

16. Conflicts of Interest.

16.1 City will evaluate Artist's duties pursuant to this Agreement to determine whether disclosure under the Political Reform Act and City's Conflict of Interest Code is required of Artist or any of Artist's employees, agents, or subcontractors. Should it be determined that disclosure is required, Artist or Artist's affected employees, agents, or subcontractors will complete and file with the City Clerk those schedules specified by City and contained in the Statement of Economic Interests Form 700.

16.2 Artist understands that its professional responsibility is solely to City. Artist warrants that it presently has no interest, present or contemplated, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Artist further warrants that neither Artist, nor Artist's agents, employees, subcontractors and Artists have any ancillary real property, business interests or income that will be affected by this Agreement or, alternatively, that Artist will file with the City an affidavit disclosing this interest. Artist will not knowingly, and will take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If after employment of a person, Artist discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Artist will promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

17. General Compliance with Laws. Artist will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Artist, or in any way affect the performance of the Services by Artist. Artist will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of the Services with all applicable laws, ordinances and regulations.

18. Discrimination and Harassment Prohibited. Artist will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

19. Termination. In the event of the Artist's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Artist in writing pursuant to the notice provisions of this Agreement. Artist has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Artist has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement. In the event City elects to terminate, City will have the right to immediate possession of all Work Product and work in progress prepared by Artist, whether located at the project site, at Artist's place of business, or at the offices of a subcontractor.

Either Party, upon tendering thirty (30) calendar days written notice to the other Party, may terminate this Agreement for convenience. In this event and upon request of City, Artist will assemble the work product without charge and put it in order for proper filing and closing and deliver it to City. Artist will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

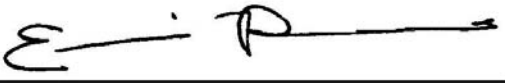
20. Covenants Against Contingent Fees. Artist warrants that Artist has not employed or retained any company or person, other than a bona fide employee working for Artist, to solicit or secure this Agreement, and that Artist has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to terminate this Agreement for nonperformance, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.
21. Claims And Lawsuits. By signing this Agreement, Artist agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Artist acknowledges that if a false claim is submitted to City by Artist, it may be considered fraud and Artist may be subject to criminal prosecution. Artist acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act, applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Artist acknowledges that the filing of a false claim may subject Artist to an administrative debarment proceeding as the result of which Artist may be prevented to act as a Artist on any public work or improvement for a period of up to five (5) years. Artist acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.
22. Jurisdiction, Venue and Governing Law. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This agreement will be governed by the laws of the State of California.
23. Testimony. Artist will testify at City's request if litigation is brought against City in connection with Artist's services under this agreement. Unless the action is brought by Artist, or is based upon Artist's actual or alleged negligence or other wrongdoing, City, upon prior written agreement with Artist will compensate Artist for time spent in preparation for testimony, testimony, and travel at Artist's standard hourly rates at the time of actual testimony.
24. Successors and Assigns. It is mutually understood and agreed that this Agreement will be binding upon the Parties and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Artist without the prior written consent of City, which will not be unreasonably withheld.
25. Section Headings. Section headings as used in this Agreement are for convenience only and will not be deemed to be a part of such sections and will not be construed to change the meaning of the section.
26. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

27. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the parties relating to the subject matter of it. The City Manager is authorized, in consultation with the City Attorney, to agree to non-material amendments to this Agreement. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

28. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Artist each represent and warrant that they have the legal power, right and actual authority to bind Artist to the terms and conditions of this Agreement.

29. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

ARTIST:

By: 
Eric Powell

CITY:

By: _____
Donna Landeros, City Manager

ATTEST:

By: _____
Margaret Wimberly, City Clerk

APPROVED AS TO FORM:


By: 
Damien Brower, City Attorney

EXHIBIT "A"

**SCOPE OF SERVICES, SCHEDULE OF WORK
AND PRICING SCHEDULE**

Artist will complete the following work in the manner and time frame described below:

City Hall Wall Mural

The City Hall wall mural will be painted on to the City hall exterior wall, a full-color mural with an anti-graffiti coating.

Work on the City Hall mural will begin upon completion of construction of Phase 1A, which will be late May / early June 2011. Preparation work for this project will begin prior to completion of Phase 1A and the actual mural work will begin no later than April 2011 with a late May 2011 completion.

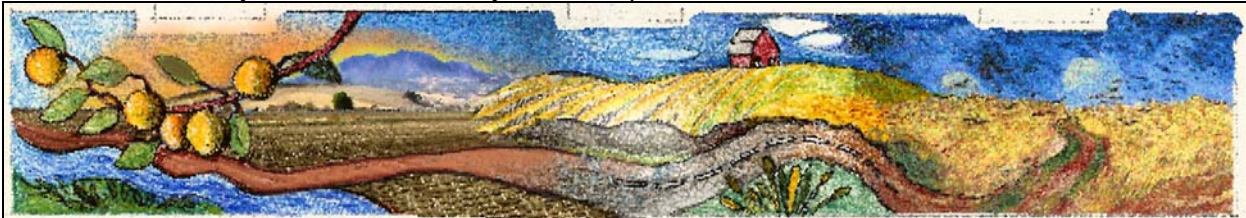


City Hall Wall Mural

Civic Plaza Fountain Mosaic

The Civic Center Plaza fountain will be covered with a detailed mosaic tile, depicting life in Brentwood.

The fountain mosaic work process will take approximately five months from creation to completion and will begin no later than January 2011 with a late May 2011 completion.

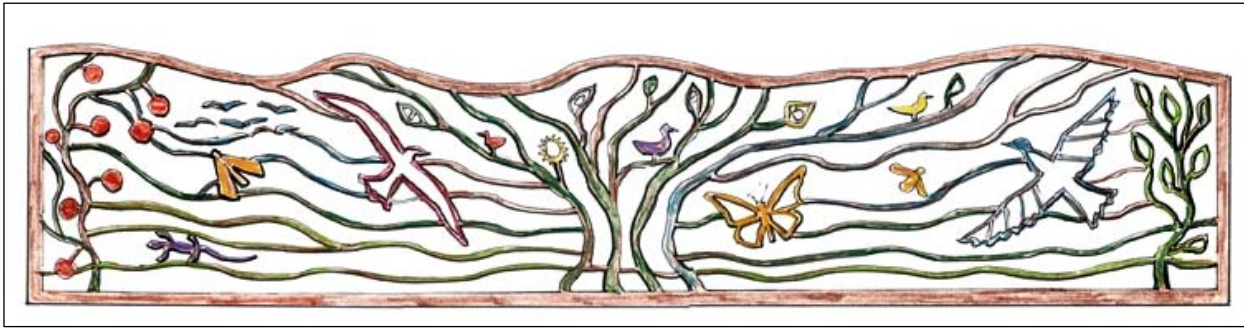


Civic Plaza Fountain Mosaic

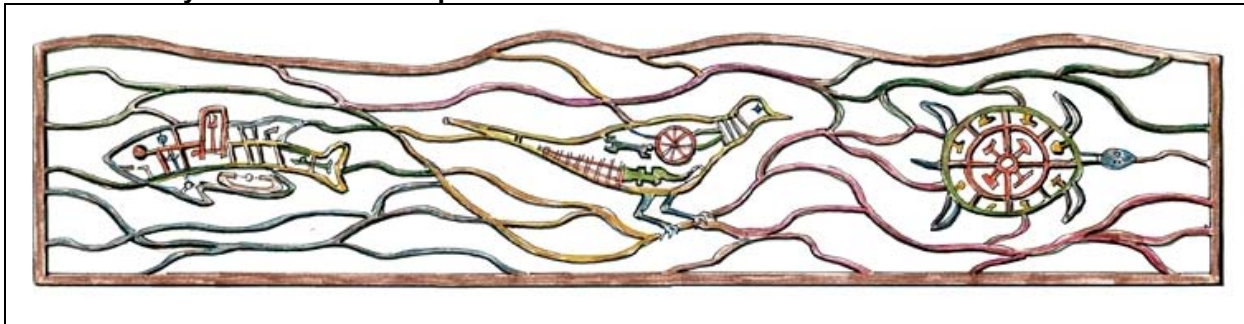
Children's Play Area Fence

The City Park Children's play area fence will be a decorative, play fence along Oak Street near the play equipment.

Estimated completion time for the full process is ten weeks. Process to start no later than August 2011 with a completion date of mid-October 2011.



Children's Play Area Fence Concept # 1



Children's Play Area Fence Concept # 2

Pricing Schedule

\$290,000				
1/11/10	\$62,000	\$25,500	\$202,500	\$290,000
	Fence	Mural	Mosaic	Total
Artist Fee (25%)	\$14,000	\$5,750	\$46,530	\$66,280
Project Expenses				
1. Project Consultants, including Structural Engineer, and others, as required	\$1,500	\$2,000	\$38,500	\$42,000
2. Materials	\$4,000	\$1,780	\$27,000	\$32,780
3. Fabrication	\$16,960	\$9,400	\$40,500	\$66,860
4. Equipment rental	\$1,500	\$0	\$0	\$1,500
5. Insurance (Automobile, General Liability, Risk of Loss, additional)	\$2,080	\$520	\$2,600	\$5,200
6. Studio, Operation and Administrative Expenses	\$7,936	\$1,990	\$9,920	\$19,846
7. Transportation and delivery of artwork	\$1,250	\$1,320	\$1,200	\$3,770
8. Delivery costs, equipment rental, transportation	\$450	\$0	\$350	\$800
9. Installation (Performed by City or Artist TBD)	\$6,000	\$0	\$15,000	\$21,000
8. Project contingency up to 10%	\$6,400	\$2,700	\$20,900	\$30,000
TOTAL PROJECT BUDGET	\$62,076	\$25,460	\$202,500	\$290,036